

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

WP(C).No. 2604 of 2007(I)

CMA.146/2005 of I ADDL. DISTRICT COURT, TRIVANDRUM
OS.1350/2005 of I ADDL.M.C.,TRIVANDRUM
(IA.9380/05,9381/05)
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PETITIONER:

K.E. EAPEN, S/O.EAPEN EAPEN,
T.C.49/284, SANKARAMANGALAM
FAWAHAR NAGAR, TRIVANDRUM.

BY ADV. SRI.C.M.STEPHEN

RESPONDENTS:

1. K.G. REETHA, D/O.GOMATHI AMMA,
G-8, 'AJATHA', JAWAHAR NAGAR,
SASTHAMANGALAM, NOW RESIDING AT NO.63,
N.V.NAGAR, PEROORKADA, THIRUVANANTHAPURAM.

2. K. SUDHARSANA KUMAR,
S/O.LATE KESAVAN, G-8, 'AJATHA'
JAWAHAR NAGAR, SASTHAMANGALAM,
NOW RESIDING AT NO.63, N.V. NAGAR,
PEROORKADA, THIRUVANANTHAPURAM.

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 23/01/2007, ALONG WITH WPC 2672/07 THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .Nos.2604/07 & 2672/07

Dated 23rd January 2007

J U D G M E N T

Petitioner is defendant and respondent the plaintiff in O.S.1350/2005 on the file of First Additional Munsiff court, Thiruvananthapuram. Respondents filed I.A.9380/05, application under Order XXXIX Rule 1 of Code of Civil Procedure, for an order of temporary injunction. They also filed I.A.9381/05 for a direction to construct the northern demolished portion of the compound wall. Petitioner resisted both applications contending that he has got a right over the road leading to his property and respondent has not exclusive right over the road. As per Ext.P8 order learned Munsiff found a prima facie case in favour of respondents. Holding that balance of convenience is also in their favour, under Ext.P8 order learned Munsiff allowed both the applications. Petitioner challenged the common order in C.M.A.Nos.145/05 and 146/05. As per Ext.P9 common order, learned District Judge dismissed both appeals confirming the prima

facie case and balance of convenience found by learned Munsiff. These writ petitions were filed challenging Ext.P9 common order.

2. Learned counsel appearing for petitioner was heard.

3. Argument of learned counsel appearing for petitioner is that learned Munsiff and District Judge did not properly appreciate the case and under the orders in interlocutory applications the very reliefs sought for in the suit were granted and by the result of the order, petitioner has no way to his property and petitioner cannot enjoy his property and in such circumstance, Ext.P8 and P9 orders are to be quashed.

4. On going through Exts.P8 and P9 orders, it is clear that learned Munsiff and District Judge considered the question in the proper perspective. Learned Munsiff and learned District Judge found that prima facie petitioner did not have a right over the road, which is a private way available to respondent. In such circumstance, respondents are entitled to the temporary injunction sought for. Both courts have found that a part of northern compound wall was demolished for the purpose of exclusive an access to

the disputed road and respondents are entitled to get it re-constructed.

5. Question is whether in exercise of the extraordinary jurisdiction of this court under Article 227 of Constitution of India, any interference is warranted. When trial court and appellate court exercised the discretion properly, it is not for this court to interfere with the discretion exercised by the courts in exercise of the supervisory or extraordinary jurisdiction of this court under Article 227 of Constitution of India. Question whether petitioner has right over the road as claimed by him, is to be decided in the suit on the evidence. Prima facie courts found that petitioner has no right and respondents have establish the right. In such circumstance, both writ petitions are dismissed. Learned Munsiff is directed to dispose the suit, as expeditiously as possible, untrammelled by any observations in Ext.P8 or P9 or in this judgment.

**M.SASIDHARAN NAMBIAR,
JUDGE.**

uj.

